



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 105

[Docket No. USCG-2022-0052]

RIN 1625-AC80

Transportation Worker Identification Credential (TWIC) – Reader Requirements; Second Delay of Effective Date

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to further delay the effective date for certain facilities affected by the final rule entitled “Transportation Worker Identification Credential (TWIC)—Reader Requirements,” published in the **Federal Register** on August 23, 2016. The current effective date for the final rule is May 8, 2023. The Coast Guard proposes delaying the effective date for: facilities that handle certain dangerous cargoes in bulk, but do not transfer those cargoes to or from a vessel; facilities that handle certain dangerous cargoes in bulk, and do transfer those cargoes to or from a vessel; and facilities that receive vessels carrying certain dangerous cargoes in bulk, but do not, during that vessel-to-facility interface, transfer those bulk cargoes to or from those vessels. Specifically, we propose to delay the effective date for these facilities for 3 years from the original delay expiration date of May 8, 2023 to May 8, 2026, but invite comments as well on possibly extending the delay through as late as May 8, 2029. This delay will give the Coast Guard time to further analyze the potential effectiveness of the reader requirement in general as well as at these facilities.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2022-0052 using the Federal Decision Making Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document or technical inquiries, call or email Lieutenant Commander Jeffrey Bender, U.S. Coast Guard; telephone 202-372-1114; email Jeffrey.M.Bender@uscg.mil. General information and press inquiries: Contact Chief Warrant Officer 3 Kurt Fredrickson, U.S. Coast Guard; telephone (202) 372-4619; email Kurt.N.Fredrickson@uscg.mil.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

The Coast Guard views public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies,

and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2022-0052 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. That FAQ page also explains how to subscribe for email alerts that will notify you when comments are posted or if a final rule is published. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Public meeting. We do not plan to hold a public meeting, but we will consider doing so if we determine from public comments that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

II. Abbreviations

2016 TWIC Reader final rule	Transportation Worker Identification Credential (TWIC) – Reader Requirements” final rule published August 23, 2016
2020 delay rule	“TWIC-Reader Requirements; Delay of Effective Date” final rule published March 9, 2020
ANPRM	Advance notice of proposed rulemaking
CAP	Corrective Action Plan
CDC	Certain Dangerous Cargoes
CFR	Code of Federal Regulations
COVID-19	Coronavirus disease, 2019
DHS	Department of Homeland Security
FR	Federal Register
FSP	Facility Security Plan
HSOAC	Homeland Security Operational Analysis Center
MSRAM	Maritime Security Risk Analysis Model
MTSA	Maritime Transportation Security Act of 2002
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
PIN	Personal identification number
SAFE Port Act	Security and Accountability for Every Port Act of 2006
§	Section
TSA	Transportation Security Administration
TWIC	Transportation Worker Identification Credential
U.S.C.	United States Code

III. Regulatory History

Pursuant to the Maritime Transportation Security Act of 2002 (MTSA),¹ and in accordance with the Security and Accountability for Every Port Act of 2006 (SAFE Port Act),² the electronic inspection of Transportation Worker Identification Credentials (TWIC) is required inside secure areas on certain vessels and facilities in the United States. Specifically, the SAFE Port Act required that the Secretary put into effect regulations that require the deployment of electronic transportation security card readers.³ To implement this requirement in an effective manner, the Coast Guard undertook a series of regulatory actions culminating in a requirement to implement electronic TWIC inspection at certain high-risk vessels and facilities regulated under MTSA.

On May 22, 2006, the Coast Guard and the Transportation Security Administration (TSA)

¹ See Sec. 102 of Pub. L. 107-295 (November 25, 2002), codified as 46 U.S.C. 70105.

² See Sec. 104 of Pub. L. 109-347 (October 13, 2006).

³ See 46 U.S.C. 70105(k)(3).

jointly published a notice of proposed rulemaking (NPRM) entitled “Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver’s License.”⁴ After considering comments on the NPRM, the Coast Guard and TSA published the final rule on January 25, 2007, also entitled “Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver’s License.”⁵ This final rule set forth the requirement, among others, that all persons allowed unescorted access to secure areas in MTSA-regulated vessels and facilities were required to possess a TWIC card. It did not, however, mandate that the TWIC card be read with an electronic reader. The card could be verified by visual inspection alone, without making use of the electronic security features built into the card.

Although the May 22, 2006 NPRM proposed certain TWIC reader requirements, after reviewing the public comments, the Coast Guard and TSA decided not to include those proposed requirements in the 2007 final rule. Instead, we addressed those requirements in a separate rulemaking and conducted a pilot program to address the feasibility of reader requirements before issuing a final rule. For a detailed discussion of the public comments and our responses to them, please refer to the January 25, 2007 final rule (Volume 72 of the **Federal Register** (FR), Page 3491).

On March 27, 2009, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) on the topic of TWIC reader requirements.⁶ The ANPRM discussed dividing vessels and facilities into three “risk groups”—Risk Group A for the high-risk vessels and facilities, Risk Group B for medium-risk vessels and facilities, and Risk Group C for low-risk vessels and facilities. The ANPRM also considered different electronic inspection requirements for Risk Groups A and B, with no electronic inspection requirements for Risk Group C. On March 22, 2013, we published an NPRM that proposed the three risk groups (A, B, and C), but limited the proposed electronic TWIC

⁴ 71 FR 29395 (May 22, 2006).

⁵ 72 FR 3491 (January 25, 2007).

⁶ 74 FR 13360 (March 27, 2009).

inspection requirements to Risk Group A vessels and facilities only.⁷

On August 23, 2016, we published a final rule entitled “Transportation Worker Identification Credential (TWIC) – Reader Requirements” (“2016 TWIC Reader final rule”) that eliminated the three-risk group structure and required that the high-risk vessels and facilities (still referred to as Risk Group A) conduct electronic TWIC inspection for all personnel seeking unescorted access to secure areas of the vessel or facility⁸; Risk Group A facilities and vessels are defined within 33 CFR 104.263, 105.253 and 106.258.

The Congress also passed several laws that impacted implementation of the TWIC reader program. On December 16, 2016, the President signed the bill entitled “Transportation Security Card Program Assessment.” This law required, among other things, the Secretary of Homeland Security to commission a report reviewing the security value of the TWIC program by: (1) Evaluating the extent to which the TWIC program addresses known or likely security risks in the maritime and port environments; (2) evaluating the potential for a non-biometric credential alternative; (3) identifying the technology, business process, and operational impact of the TWIC card and readers in maritime and port environments; (4) assessing the costs and benefits of the Program, as implemented; and (5) evaluating the extent to which the Department of Homeland Security (DHS) has addressed the deficiencies of the TWIC program previously identified by the Government Accountability Office (GAO) and the DHS Office of the Inspector General (OIG). On August 2, 2018, the President followed up by signing the “Transportation Worker Identification Credential Accountability Act of 2018,” which prohibited the Coast Guard from implementing the TWIC Reader rule until at least 60 days after it submits the above report to the Congress. On May 15, 2017, the Coast Guard received a petition for rulemaking requesting that it revise the final rule and impose electronic TWIC inspection requirements on only those vessels and facilities that engage in a maritime transfer of certain dangerous cargoes (CDC).⁹ This is further discussed in

⁷ 78 FR 17781 (March 22, 2013).

⁸ 81 FR 57651.

⁹ See Docket number USCG-2017-0447, available at www.regulations.gov

Section IV. On June 22, 2018, we published a second NPRM, which proposed delaying the implementation of the 2016 TWIC Reader final rule.¹⁰

On March 9, 2020, the Coast Guard published a final rule entitled “TWIC-Reader Requirements; Delay of Effective Date” (“the 2020 delay rule”).¹¹ The 2020 delay rule extended the effective date of the 2016 rule only for Risk Group A facilities that handle CDC in bulk until May 8, 2023; the implementation date for facilities designated as Risk Group A due to their receiving of vessels certificated to carry more than 1,000 passengers remained unchanged and was implemented on August 23, 2018 (enforcement of the regulation was delayed due to the global COVID-19 pandemic until January 1, 2022).

In 2020, the Coast Guard commissioned the Homeland Security Operational Analysis Center (HSOAC), the Department’s studies and analysis federally funded research and development center (FFRDC) operated by the RAND Corporation, to conduct an analysis to identify the population of facilities handling certain dangerous cargoes impacted by the 2016 TWIC Reader final rule, to develop a risk-consequence analysis for these facilities, and to conduct a benefit-cost analysis based on the information collected and analyzed during this subsequent study. The Rand Corporation analysis was received by the Coast Guard on July 29, 2022; the options for implementing the 2016 TWIC Reader final rule are currently being evaluated. While we evaluate the study results, to avoid the 2016 TWIC Reader rule going into effect and creating confusion and conflicts between its original requirements and the potential outcomes of the study, the Coast Guard will delay the original rule’s implementation. The 2016 TWIC Reader final rule would remain in effect for facilities receiving vessels certificated to carry more than 1,000 passengers (33 CFR 104.263, 105.253 and 106.258), as this proposed rule would not affect those facilities.

IV. Background

The 2016 TWIC Reader final rule established electronic TWIC reader regulations for certain

¹⁰ TWIC-Reader Requirements; Delay of Effective Date, 83 FR 29067 (June 22, 2018).

¹¹ 85 FR 13493.

high-risk vessels and MTSA-regulated facilities. Shortly thereafter, the chemical industry expressed concern that the final rule significantly expanded the scope of the 2013 NPRM, and requested that the Coast Guard narrow the classes of chemical facilities that would be subject to the enhanced security requirements. An industry association representing terminal companies nationwide then initiated litigation against the Department of Homeland Security (DHS) in 2017, claiming that the 2016 TWIC Reader final rule violated the Administrative Procedure Act (APA).¹² However, the court dismissed the action, holding that the issue was not ripe for adjudication because Congress passed legislation delaying the implementation of the final rule, and there was a likelihood that Congress or the Coast Guard might amend or replace the regulation.¹³

In June 2020, DHS published the Coast Guard's corrective action plan (CAP) entitled *Corrective Action Plan from the Assessment of the Risk Mitigation Value of the Transportation Worker Identification Credential*.¹⁴ The CAP identified the need to conduct a risk analysis over the next 3 years in order to identify all facilities handling CDC and analyze the need for TWIC readers.

In September 2020, the Coast Guard again commissioned the HSOAC, operated by the RAND Corporation, to conduct a subsequent analysis to identify the population of facilities handling CDC impacted by the 2016 TWIC Reader final rule, to develop a risk-consequence analysis for these facilities, and to conduct a benefit/cost analysis.

V. Discussion of the Proposed Rule to Delay the Effective Date

In this NPRM, we propose to delay the effective date for facilities that handle CDC in bulk for 3 years from the original delay expiration date of May 8, 2023 to May 8, 2026. These facilities would not need to install electronic TWIC readers at least until the new implementation date. 2016 TWIC Reader final rule would remain in effect for facilities receiving vessels certificated to carry more than 1,000 passengers, as this proposed rule would not affect those facilities. This proposed

¹² *Int'l Liquid Terminals Ass'n v. U.S. Dep't of Homeland Sec.*, No. 1:18-cv-00467, 2018 WL 8667001, at *1 (E.D. Va., Sept. 17, 2018).

¹³ *Id.* at *2.

¹⁴ A copy of the study is available in the docket for this rule. *Corrective Action Plan from the Assessment of the Risk Mitigation Value of the Transportation Worker Identification Credential; Report to Congress, June 2020*.

rule would delay the implementation of TWIC readers for facilities that handle CDC in bulk so the Coast Guard can accurately determine the affected population through an analysis by the HSOAC, which would measure and assess potential risks of CDC, including the types of CDC, population density within a certain distance of the facility and other risk and consequence aspects.

This proposed rule would allow the industry to provide further input on the implementation of the 2016 TWIC Reader final rule, and would provide additional time so that facility owners and operators can plan accordingly for implementation. We invite your comments on the proposed second delay of the 2016 TWIC Reader final rule we have reflected in our proposed regulatory text of an additional 3 years. We also realize that HSOAC study recommendations, and other relevant matters presented, may require the Coast Guard to possibly delay the effective date for more than three additional years and invite comments on possibly extending the delay through as late as May 8, 2029.

VI. Regulatory Analyses

This rulemaking would further delay the effective date for three types of facilities affected by the 2016 TWIC Reader final rule. Specifically, these are: (1) facilities that handle CDC in bulk, but do not transfer those cargoes to or from a vessel; (2) facilities that handle CDC in bulk and do transfer those cargoes to or from a vessel; and (3) facilities that receive vessels carrying CDC in bulk, but do not, during that vessel-to-facility interface, transfer those bulk cargoes to or from said vessels. The current effective date of the 2016 rule for these facilities is May 8, 2023, which was established by the 2020 delay rule. With this proposed rule, we would delay the effective date for facilities that handle CDC in bulk by an additional 3 years, until May 8, 2026.

Below, we provide an updated Regulatory Analyses of the 2016 TWIC Reader final rule that presents the impacts of delaying the effective date of the final rule for the three types of Risk Group A facilities defined in the preceding paragraph. For this updated analysis, we estimated the impact of delaying the final rule by calculating the 10-year cost of this proposed rule where only certain

facilities will incur costs starting in year 4, and no facilities will incur costs in the first 3 years, in order to compare it to the 10-year cost presented in the Regulatory Impact Analyses (RIA) for the 2016 TWIC Reader final rule. We then calculated the difference between the two costs to estimate the impact, which is a net cost savings, of this proposed rule.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866. The Office of Management and Budget (OMB) has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. In accordance with OMB Circular A-4, we have prepared an accounting statement showing the classification of impacts associated with this final rule.

Table 1--OMB A-4 Accounting Statement 2022-2032 Period of Analysis—2020 Dollars

	Primary Estimate		Source
Benefits			
Annualized monetized benefits	-	7%	RA
	-	3%	
Annualized quantified, but unmonetized, benefits	None		RA
Unquantifiable Benefits	For facilities with a delayed compliance, final rule will postpone the enhanced benefits of electronic TWIC Inspection.		RA
Cost Savings			
Annualized monetized	(\$5.4)	7%	RA
costs (\$ Mil)	(\$3.6)	3%	RA

Annualized quantified, but unmonetized, costs	None		RA
Qualitative (un-quantified) cost savings	The proposed rule would delay the cost to retrieve or replace lost PINs for use with TWICs for the facilities with delayed implementation		RA
Transfers			
Annualized monetized transfers: “on budget”	Not calculated		RA
From whom to whom?			RA
Annualized monetized transfers: “off-budget”	None		
From whom to whom?	None		
Miscellaneous Analyses/Category			
Effects on Tribal, State, and/or local governments	None		
Effects on small businesses	Proposed rule would not have a significant economic impact on a substantial number of small entities		RA
Effects on wages	None		
Effects on growth	No determination		

This rulemaking would further delay the effective date for certain facilities—that is, all facilities that handle certain CDC in bulk—affected by the 2016 TWIC Reader final rule. The current effective date of the 2016 rule for these facilities is May 8, 2023, which was established by the first effective date 2020 delay rule, published March 9, 2020. With this proposed rule, we would delay the effective date for these facilities for 3 years from the original delay expiration date of May 8, 2023, to May 8, 2026, but invite comments as well on possibly extending the delay to as late as May 8, 2029.

This proposed rule would delay the implementation of the 2016 TWIC Reader final rule by 3 years (May 8, 2026, or later) for facilities that handle CDC in bulk but do not transfer it to or from a vessel, facilities that handle CDC in bulk and do transfer those cargoes to or from a vessel, and facilities that receive vessels carrying bulk CDC but, during that vessel-to-facility interface, do not transfer bulk CDC to or from the vessel. This proposed rule does not modify any of the regulatory requirements under the 2016 TWIC reader final rule. We did not revise our fundamental methodologies or key assumptions for the 2016 TWIC Reader final rule RIA.¹⁵

In the 2016 TWIC Reader final rule RIA, we estimated that 525 facilities and 1 vessel out of the MTSA-regulated entities (13,825 vessels and more than 3,270 facilities) would have to comply with the final rule's electronic TWIC inspection requirements using the Maritime Security Risk Analysis Model (MSRAM's) risk-based tiered approach.¹⁶ Using data from MSRAM, we estimate that this proposed rule would delay the implementation of the final rule for 370 of the 525 affected Risk Group A facilities by 3 years, while the remaining 155 facilities and 1 vessel were required to implement the final rule requirements by June 8, 2020. These 370 facilities are those that handle bulk CDC, but do not transfer it to or from a vessel, facilities that handle CDC in bulk and do transfer those cargoes to or from a vessel, and facilities that receive vessels carrying bulk CDC but, during the vessel-to-facility interface, do not transfer the bulk CDC to or from the vessel. We did not include these facilities in our MSRAM risk analysis for the 2016 final rule or in the 2016 final rule's RIA, as, we could not determine the number of those facilities at the time, and we did not include them in our cost estimates for this proposed rule. The number of actual facilities that meet the criteria, and that fall into the above category, will not be known until after an additional study is conducted to improve the risk methodology and determine the new risk groups. The final count of facilities will most likely be similar, but not identical to the cited 370 facilities. Therefore, the USCG is using its discretion to delay the implementation of the TWIC reader rule on those 370

¹⁵ Available in the docket; docket number USCG-2007-28915-0231.

¹⁶ See Table 2.8 on page 26 of the 2016 TWIC Reader final rule Regulatory Analysis for the estimate of 525 facilities, and Table 2.1 on page 23 for the estimate of 1 vessel.

facilities until a more accurate population estimate can be established. Future regulatory analyses will update these estimates once the commissioned risk study is complete and the Coast Guard has assessed which CDC facilities fall within the level or risk that is deemed appropriate to require a TWIC reader. We updated our final rule cost estimates from 2012 to 2020 based on Gross Domestic Product (GDP) deflator data from the U.S. Bureau of Economic Analysis (BEA).¹⁷ The GDP deflator is a measure of the change in price of domestic goods and services purchased by consumers, businesses, and the Government.

Table 2 summarizes the costs and benefits of the 2020 Final Rule to Delay the TWIC Reader Final rule, as well as this proposed rule, which would extend the delay from the 2020 Final Rule. We do not anticipate any new costs to industry if the final rule is implemented, because this proposed rule would not change the applicability of the 2016 final rule or any subsequent amendments thereof. This proposed rule would result in no other changes to the 2016 TWIC Reader final rule. There is no impact to the one previously affected vessel and 155 MTSA facilities that complied with the TWIC rule as of June 8, 2020. Because this proposed rule would extend the delay on implementation of the final rule by three years for 370 facilities, it would result in cumulative cost savings to industry and the Government of \$37.84 million (discounted at seven percent) over a 10-year period of analysis (\$152.95 million minus \$115.12 million). At a seven percent discount rate, we estimate the total annualized cost savings to be \$5.39 million (\$21.78 million minus \$16.39 million).

Table 2–Summary of Costs Saving and Change in Benefits: 2020 Final Rule to Delay TWIC Final Rule to NPRM to Delay the Final Rule

Category	2020 TWIC Reader Final Delay Rule (2020 Dollars)	Proposed Rule to Delay 2016 TWIC Reader Final Rule (2020 Dollars)
Affected Population	370 facilities that handle bulk CDC, and an unknown number of facilities that receive vessels carrying bulk CDC but, during	370 facilities that handle bulk CDC, but do not transfer it to or from a vessel and that handle bulk CDC and do

¹⁷ For consistency across rulemaking analyses, we are using the annual Implicit Price Deflators for Gross Domestic Product (BEA National Income and Product Accounts (NIPA) Table 1.1.9) values updated in 2021, accessed by the Coast Guard through the BEA’s publicly available data sets. The NIPA tables can be found at: https://apps.bea.gov/iTable/index_nipa.cfm

	that vessel-to-facility interface, do not transfer bulk CDC to or from the vessel.	transfer such cargoes to or from a vessel (to comply by May 8th, 2026). The proposed rule would also apply to facilities that receive vessels carrying bulk CDC but, during that vessel-to-facility interface, do not transfer bulk CDC to or from the vessel. However, the number of these facilities cannot be determined at this time and will not be known until after an additional study is conducted to improve the risk methodology and determine the new risk groups to comply by May 8, 2026. <i>No change from final rule</i>
Costs to Industry and Government (\$ millions, 7% discount rate).	Industry: \$21.76 (annualized) Government: \$0.015 (annualized) Both: \$21.78 (annualized)	Industry: \$16.38 (annualized) Government: \$0.008 (annualized) Both: \$16.39 (annualized)
	Industry: \$152.85 (10-year) Government: \$0.103 (10-year) Both: \$152.95 (10-year)	Industry: \$115.06 (10-year) Government: \$0.059 (10-year) Both: \$115.12 (10-year)
Change in Costs (Qualitative)	Time to retrieve or replace lost personal identification numbers (PINs) for use with TWICs	The proposed rule would delay the cost to retrieve or replace lost PINs for use with TWICs for the facilities with delayed implementation
Change in Benefits (Qualitative)	Enhanced access control and security at U.S. maritime facilities and on-board U.S.-flagged vessels	Delaying enhanced access control and security for the facilities with delayed implementation
	Reduction of human error when checking identification and manning access points	Delaying the reduction of human error when checking identification and manning access points for the facilities with delayed implementation
Total Cost Savings (\$ millions, 7% discount rate) <i>Annualized</i>		Industry: \$5.38 (annualized) Government: \$0.006 (annualized) Total: \$5.39 (annualized)

<i>10 – Year</i>	Industry: \$37.79 (10-year) Government: \$0.04 (10-year) Total: \$37.84 (10-year)
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Methodology

Final Rule Costs Inflated to 2020 dollars

As shown in table 1, we updated the annualized cost of the 2016 TWIC Reader final rule from 2012 dollars to 2020 dollars (over a 10-year period), then adjusted the population count to be consistent with the smaller affected population. With adjustments, the cost of the rule (over a 10-year period) is approximately \$21.76 million, at a seven percent discount rate. We performed this update to compare those costs to this proposed rule’s total industry costs on the same basis. The following costs take into account revisions made in the 2020 delay rule of March 9, 2020 that corrected mathematical errors from the 2016 TWIC Reader rule which, impacted the estimated average number of readers per access point, and the average installation and infrastructure costs for facilities. Although we have updated our analysis from the NPRM to reflect these changes, this did not modify the methodology of our RA, other than to account for the reduced population that is affected by this NPRM.

We used an inflation factor from the annual GDP deflator data. We calculated the inflation factor of 1.136 by modifying the deflator base year to 2020 (GDP deflator = 100 at 2020 prices) and dividing the annual 2020 index number (100) by the annual 2012 index number (88). We then applied this inflation factor to the costs for vessels and additional costs, which include additional delay costs, travel costs, and the cost to replace TWIC readers that fail (Table 4.38 of the final rule RIA).

For facilities, we applied this inflation factor to the total cost-by-cost component (table 4.17 of the 2016 TWIC Reader final rule) because the proposed rule would apply to only some of these cost elements. Facility costs include capital costs, maintenance costs, and operational costs. Capital costs consist of the cost to purchase and install TWIC readers, as well as the cost to fully replace

TWIC readers 5 years after the original installation. Maintenance costs account for the costs to maintain TWIC readers every year after the original installation. Operational costs include costs that occur only at the time of the TWIC reader installation, such as those for amending security plans, creating a recordkeeping system, and initial training. Operational costs also include ongoing costs, such as those for keeping and maintaining records, downloading the canceled card list, and ongoing annual training.

Proposed Rule Costs

This proposed rule would delay the effective date of the final rule by three years (until May 8, 2026) for 370 facilities that handle bulk CDC, but do not transfer it to or from a vessel and facilities that handle CDC in bulk, and do transfer those cargoes to or from a vessel, and an undetermined number of facilities that receive vessels carrying bulk CDC, but do not transfer it to or from the vessel during that vessel-to-facility interface. To allow for a consistent comparison between the baseline estimates and the costs of this proposed rule, we maintain the assumption from the 2016 TWIC Reader final rule RA that 50 percent of facilities will comply for each of the two final years preceding the final implementation date. Therefore, for this NPRM, we assume that 50 percent of facilities with a three-year implementation delay will comply in May of year 3, and 50 percent of facilities with a three-year implementation delay will comply in year 4. We maintain this assumption to provide a consistent comparison between the baseline cost estimates presented in the 2016 TWIC Reader final rule, and the costs of this rule.

The costs are separated into three categories (2020 dollars): 1) capital costs of which the initial average capital cost per facility is \$278,630; 2) maintenance costs, of which the average annual cost incurred per facility for the first year is \$4,290; and 3) operational costs, which on average per facility are \$8,594. The total undiscounted costs for the first year of operation on average per facility is \$287,220. After the initial five-year period of use, TWIC readers may need to be replaced, our assumption is that all readers will need to be replaced at five-year intervals, although it is likely that this will not be the case and that only a percent of readers will need

replacement. The average cost per facility to replace its TWIC readers is \$4,296.

To estimate the capital costs in a given year, we multiplied the total baseline capital costs for all facilities by the percentage of facilities incurring costs in a given year. Because maintenance costs are not incurred until the year after the TWIC readers are installed, we calculated the proposed rule maintenance costs in a given year by multiplying the total baseline costs for all facilities by the percentage of facilities complying in the previous year. We estimated operational costs in a similar manner, multiplying total operational costs by the percentage of facilities complying in a given year.

Table 3 presents the total cost to facilities under this proposed rule.

Table 3—Total Cost for Facilities from Partially Delaying the Effective Date of the 2016 TWIC Reader Final Rule (Millions 2020 Dollars)

Year	Number of New Facilities	Total Number of Facilities	Capital Costs	Maintenance Costs	Operational Costs	Undiscounted Total
1	0	0	\$0.00	\$0.00	\$0.00	\$0.00
2	0	0	\$0.00	\$0.00	\$0.00	\$0.00
3	0	0	\$0.00	\$0.00	\$0.00	\$0.00
4	185	185	\$51.64	\$0.00	\$1.59	\$53.23
5	185	370	\$52	\$0.80	\$2.13	\$54.57
6	0	370	\$0.00	\$1.59	\$1.07	\$2.66
7	0	370	\$0.00	\$1.59	\$1.07	\$2.66
8	0	370	\$0.00	\$1.59	\$1.07	\$2.66
9	0	370	\$7.96	\$2.26	\$1.07	\$11.29
10	0	370	\$7.96	\$2.26	\$1.07	\$11.29
Total			\$119.21	\$10.09	\$9.07	\$138.37
Note: Totals may not sum due to rounding.						

Table 4 summarizes the total costs to industry of this proposed rule in 2020 dollars. This proposed rule would not impact the compliance schedule for vessels, therefore these costs remain unchanged from the baseline. We calculated the additional costs by multiplying the totals in table 2 by the percentage of facilities complying within a given year and phasing them in over two years. Over ten years, we estimate the annualized cost to industry to be \$16.38 million at a seven percent discount rate.

Table 4 – Total Industry Cost Under the 2022 Proposed Rule Partially Delaying the Effective Date of the 2016 TWIC Reader Rule (Millions, 2020 Dollars)

Year	Facility	Vessel	Additional Costs*	Undiscounted	7%	3%
1	\$0.00	\$0.000	\$0.00	\$0.00	\$0.00	\$0.00
2	\$0.00	\$0.000	\$0.00	\$0.00	\$0.00	\$0.00
3	\$0.00	\$0.000	\$0.00	\$0.00	\$0.00	\$0.00
4	\$53.23	\$0.000	\$1.69	\$54.92	\$41.90	\$48.80
5	\$54.57	\$0.000	\$4.78	\$59.35	\$42.31	\$51.19
6	\$2.66	\$0.000	\$4.78	\$7.45	\$4.96	\$6.24
7	\$2.66	\$0.000	\$4.78	\$7.45	\$4.64	\$6.05
8	\$2.66	\$0.000	\$4.78	\$7.45	\$4.33	\$5.88
9	\$11.29	\$0.000	\$4.78	\$16.07	\$8.74	\$12.32
10	\$11.29	\$0.000	\$4.78	\$16.07	\$8.17	\$11.96
Total	\$138.37	\$0.000	\$30.38	\$168.75	\$115.06	\$142.44
Annualized					\$16.38	\$16.70
* These costs include additional delay, travel, and TWIC replacement costs due to TWIC failures. Totals may not sum due to rounding.						

Table 5 presents the estimated change in total costs to industry from delaying the implementation of the 2016 TWIC Reader final rule by three years (until May 8, 2026) for facilities that handle bulk CDC, but do not transfer it to or from a vessel, facilities that handle CDC in bulk, and do transfer those cargoes to or from a vessel, and facilities that receive vessels carrying bulk CDC, but do not transfer it to or from the vessel during that vessel-to-facility interface. We estimated an annualized cost savings to industry of \$3.60 million at a seven percent discount rate.

Table 5 – Total Change in Industry Cost from the 2020 TWIC Final Delay Rule to the 2022 NPRM Partially Delaying the Effective Date of Final Rule (Millions, 2020 Dollars)

	Total 10-year Cost (Not Discounted)	Total 10-year Cost (Discounted)		Annualized Cost	
		7%	3%	7%	3%
2020 TWIC Final Delay Reader Rule	\$192.21	\$152.85	\$173.16	\$21.76	\$20.30
NPRM to Delay Final Rule by 3 years	\$168.75	\$115.06	\$142.44	\$16.38	\$16.70
Change (Cost Savings)	(\$23.46)	(\$37.79)	(\$30.72)	(\$5.38)	(\$3.60)

Qualitative Costs

Qualitative costs are as shown in table 1. This proposed rule would delay the cost to retrieve or replace lost PINs for use with TWICs for the facilities with delayed implementation.

Government Costs

We expect that this proposed rule would also generate a cost savings to the Government from delaying the review of the revised security plans for 370 Risk Group A facilities that handle bulk CDC, but do not transfer it to or from a vessel, and facilities that receive vessels carrying bulk CDC. There is no change in cost to the Government resulting from TWIC inspections, because inspections are already required under MTSA, and the TWIC reader requirements do not modify these requirements. As such, there is no additional cost to the Government.

To estimate the cost to the Government, we followed the same approach as the industry cost analysis and adjusted the cost estimate presented in the final rule RIA from 2012 dollars to 2020 dollars. For the government analysis, we used the fully loaded 2020 wage rate for an E-5 level staff member, \$54 per hour, from Commandant Instruction 7310.1U: Reimbursable Standard Rates, in place of the 2012 wage of \$49 per hour.¹⁸ We then followed the calculations outlined on page 72 of the final rule Regulatory Analysis to estimate a government cost of \$56,700 in years four and five (\$54 x 4 hours per review x 262.5 plans).

Table 6 presents the annualized baseline government costs of \$14,596 at a seven percent discount rate.

Table 6 – Total Government Cost Under 2020 TWIC Reader Final Delay Rule (2020 Dollars)

Year	Cost of Facility Security Plan (FSP)	7%	3%
1	\$0	\$0	\$0
2	\$0	\$0	\$0
3	\$0	\$0	\$0
4	\$39,960	\$30,485	\$35,504
5	\$39,960	\$28,491	\$34,470
6	\$0	\$0	\$0
7	\$0	\$0	\$0

¹⁸ Because the Coast Guard is not delaying the implementation schedule for vessels, the proposed rule would have no impact on the costs associated with vessel security plans, and, therefore, we did not include them in this RA.

8	\$0	\$0	\$0
9	\$0	\$0	\$0
10	\$0	\$0	\$0
Total	\$79,920	\$58,976	\$69,974
Annualized		\$8,397	\$8,203

Table 7 presents the government cost under the proposed rule. We estimated the annualized government cost to be \$8,397 at a seven percent discount rate. To estimate government costs in year 4 and year 5, we used the same approach as the baseline cost estimates.¹⁹

Table 7 – Total Government Cost Under the 2022 NPRM Partially Delaying the Effective Date of the 2016 Final Rule, Risk Group A (2020 Dollars)

Year	Cost of FSP	7%	3%
1	\$0	\$0	\$0
2	\$0	\$0	\$0
3	\$0	\$0	\$0
4	\$39,960	\$30,485	\$35,504
5	\$39,960	\$28,491	\$34,470
6	\$0	\$0	\$0
7	\$0	\$0	\$0
8	\$0	\$0	\$0
9	\$0	\$0	\$0
10	\$0	\$0	\$0
Total	\$79,920	\$58,976	\$69,974
Annualized		\$8,397	\$8,203

Table 8 presents the estimated change in government costs from delaying the implementation of the 2016 TWIC Reader final rule by three years (until May 8, 2026) for facilities that handle bulk CDC, but do not transfer it to or from a vessel, and facilities that receive vessels carrying bulk CDC, but do not transfer it to or from the vessel during that vessel-to-facility interface. We estimated an annualized cost savings to the Government of \$6,199 at a seven percent discount rate.

Table 8 – Total Change in Government Cost from the 2020 Final Rule to Delay TWIC to the 2022 NPRM Delaying the Effective Date of the 2016 TWIC Final Rule (2020 Dollars)

	Total Cost	Total Cost	Annualized Cost
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¹⁹ We calculated the total cost in year 1 as 4 hours x \$54 x 202 FSPs; the total cost in year 2 as 4 hours x \$54 x 201 FSP and the total cost in years 3 and 4, as 4 hours x \$54 x 61 FSPs.

	(Not Discounted)	(Discounted)			
		7%	3%	7%	3%
2016 TWIC Reader Final Rule	\$79,920	\$102,515	\$108,494	\$14,596	\$12,719
NPRM to Delay Final Rule by 3 years	\$113,400	\$58,976	\$69,974	\$8,397	\$8,203
Change	\$33,480	(\$43,538)	(\$38,520)	(\$6,199)	(\$4,516)

Change in Benefits

As noted, this proposed rule would delay the effective date of the 2016 TWIC Reader final rule requirement for three categories of facilities: (1) Facilities that handle bulk CDC, but do not transfer it to or from a vessel; (2) facilities that handle CDC and do transfer such cargoes to or from a vessel; and (3) facilities that receive vessels carrying bulk CDC, but do not transfer bulk CDC to or from the vessel during that vessel-to-facility interface. The facilities for which the 2016 TWIC Reader final rule would be delayed will not realize the enhanced benefits of electronic inspection, such as the increased protection against individuals who do not hold valid TWICs being granted unescorted access, enhanced verification of personal identity, and a reduction in potential vulnerabilities until May 8, 2026.

In addition, the proposed rule would delay the cost to retrieve or replace lost PINs for use with TWICs for the facilities with delayed implementation. This is an unquantified cost savings which would accrue to individual mariners and the Coast Guard.

B. Small Entities

Under the Regulatory Flexibility Act, Title 5 of the United States Code (U.S.C.), Sections 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard will delay the effective date of the 2016 TWIC Reader final rule from May

8, 2023 until May 8, 2026 for facilities that handle CDC in bulk. We estimate that, consistent with past and present analyses, 370 facilities will experience cost savings. We estimate these facilities would experience an annualized cost savings of approximately \$9,800 (with a seven percent discount rate), and that on average each entity owns two facilities and would save approximately \$19,600. We calculate that approximately two percent of the small entities impacted by this proposed 2022 delay NPRM would have a cost savings that is greater than one percent but less than three percent of their annual revenue. The other 98 percent would have a cost savings that is less than one percent of their annual revenue.

Given this information, the Commandant of the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the docket at the address listed in the **ADDRESSES** section of this preamble. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this NPRM. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This proposed rule would call for no new collection or revision of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

E. Federalism

A rule has implications for Federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

This proposed rule would delay the implementation of existing regulations that create a risk-based set of security measures for MTSA-regulated facilities. Based on this analysis, each facility is classified according to its risk level, which then determines whether the facility will be required to conduct electronic TWIC inspection. As this proposed rule would not impose any new requirements, but simply delay the implementation of existing requirements, it would not have a preemptive impact. Please refer to the Coast Guard's federalism analysis in the 2016 TWIC Reader Final Rule (81 FR 57651, 57706) for additional information.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, States and local governments have traditionally shared certain regulatory jurisdiction over waterfront facilities. Therefore, MTSA standards contained in Title 33 of the Code of Federal Regulations (CFR) part 105 (Maritime security: Facilities) are not preemptive of State or local law or regulations that do not conflict with

them (that is, they would either actually conflict or would frustrate an overriding Federal need for uniformity).

The Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION** section of this preamble.

F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a Tribal, State, or local government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year. Although this proposed rule would not result in such expenditure, we discuss the effects of this NPRM elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might

disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because although it is a “significant regulatory action” under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the Administrator of OMB’s Office of Information and Regulatory Affairs has not designated it as a significant energy action.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management

Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. This proposed rule would be categorically excluded under paragraph L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01(series). Paragraph L54 pertains to regulations that are editorial or procedural. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 105

Maritime security, Reporting and recordkeeping requirements, Security measures.

For the reasons listed in the preamble, the Coast Guard proposes to amend 33 CFR part 105 as follows:

PART 105 -- MARITIME SECURITY: FACILITIES

1. The authority citation for part 105 continues is revised as follows:

Authority: 46 U.S.C. 70034, 70103, 70116; Sec. 811, Public Law 111-281, 124 Stat. 2905; 33 CFR 1.05-1, 6.04-11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Amend § 105.253 by revising paragraphs (a)(2) through (4) to read as follows:

§ 105.253 Risk Group classifications for facilities.

(a) * * *

(2) Beginning May 8, 2026: Facilities that handle Certain Dangerous Cargoes (CDC) in bulk and transfer such cargoes from or to a vessel.

(3) Beginning May 8, 2026: Facilities that handle CDC in bulk, but do not transfer it from or to a vessel.

(4) Beginning May 8, 2026: Facilities that receive vessels carrying CDC in bulk but, during the vessel-to-facility interface, do not transfer it from or to the vessel.

* * * * *

Dated: November 30, 2022.

Linda Fagan,
Admiral, U.S. Coast Guard,
Commandant.

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